

Order

Michigan Supreme Court
Lansing, Michigan

November 16, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2009-25

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

Amendment of Rule 8.120
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 8.120 of the Michigan Court Rules are adopted, effective January 1, 2011.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 8.120. Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, and Legal Training Programs.

- (A) Legal Aid Clinics; Defender Offices. Effective legal service for each person in Michigan, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to the whole citizenry. Law students and recent law graduates, under supervision by a member of the state bar, may staff public and nonprofit defender offices, and legal aid clinics that are organized under a city or county bar association or an accredited law school or for the primary purpose of providing free legal services to indigent persons.
- (B) Legal Training Programs. Law students and recent law graduates may participate in legal training programs organized in the offices of county prosecuting attorneys, county corporation counsel, city attorneys, and the Attorney General.
- (C) Eligible Students. A student in a law school approved by the American Bar Association who has received a passing grade in law school courses and has completed the first year is eligible to participate in a clinic or program listed in subrules (A) and (B) if the student meets the academic and moral standards established by the dean of that school. For the purpose of this rule, a "recent law graduate" is a person who has graduated from law school within the last year. The student or graduate must certify in writing that he or she has read and is familiar with the Michigan Rules of Professional Conduct and the Michigan Court Rules, and shall take an oath which is reasonably equivalent to the Michigan Lawyer's Oath in requiring at a minimum the promise to: (a) support the Constitution of the United States; (b) support the Constitution of the State of Michigan; (c) maintain the respect due to courts of justice and judicial officers; (d) never seek to mislead a

judge or jury by any artifice or false statement of fact or law; (e) maintain the confidence and preserve inviolate the secrets of the client; (f) abstain from all offensive personality; (g) advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause; and (h) in all other respects conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed upon members of the state bar of Michigan.

(D) Scope; Procedure.

- (1) A member of the legal aid clinic, in representing an indigent person, is authorized to advise the person and to negotiate and appear on the person's behalf in all Michigan courts except the ~~Court of Appeals and the Supreme Court~~. The indigent person that will be assisted by the student must consent in writing to the representation.
- (2) Representation must be conducted under the supervision of a state bar member. Supervision by a state bar member includes the duty to examine and sign all pleadings filed. It does not require the state bar member to be present
 - (a) while a law student or graduate is advising an indigent person or negotiating on the person's behalf, or
 - (b) during a courtroom appearance of a law student or graduate, except
 - (i) during an appellate argument or
 - (ii) in a criminal or juvenile case exposing the client to a penalty of imprisonment more than 6 months.

The supervising attorney shall assume all personal professional responsibility for the student's or graduate's work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate.

- (3) A law student or graduate may not appear in a case in a Michigan court without the approval of the judge ~~of that court~~ or a majority of the panel of judges to which the case is assigned. If the judge or a majority of the panel grants approval, the judge or a majority of the panel may suspend the proceedings at any stage if the judge or a majority of the panel ~~he or she~~ determines that the representation by the law student or graduate

- (a) is professionally inadequate, and
- (b) substantial justice requires suspension.

In the Court of Appeals, a request for a law student or graduate to appear at oral argument must be submitted by motion to the panel that will hear the case. The panel may deny the request or establish restrictions or other parameters for the representation on a case-by-case basis.

- (4) A law student or graduate serving in a prosecutor's, county corporation counsel's, city attorney's, or Attorney General's program may be authorized to perform comparable functions and duties assigned by the prosecuting attorney, county attorney, city attorney, or Attorney General, except that
 - (a) the law student or graduate is subject to the conditions and restrictions of this rule; and
 - (b) the law student or graduate may not be appointed as an assistant prosecutor, assistant corporation counsel, assistant city attorney, or assistant Attorney General.

Staff Comment: Under this amendment, a law student or recent law graduate who is a member of a legal aid clinic is eligible to appear on behalf of a client in the Court of Appeals. The appearance would require the same protections that now exist, i.e., supervision by a licensed attorney who signs all pleadings, and approval by a majority of the judges of the assigned panel. In addition, the amendments require that an indigent person indicate in writing that he or she consents to the representation by the student, and the student must certify that he or she is familiar with the Michigan Rules of Professional Conduct and the Michigan Court Rules. The amendments further state that the supervising attorney shall assume personal professional liability for the student's or graduate's work, and require students and recent graduates to take an oath similar to the one taken by licensed attorneys. The Court will review the effects of this rule in two years.

The staff comment is not an authoritative construction by the Court.

MARKMAN, J. (*dissenting*). The modified court rule would allow law students to represent persons in the Court of Appeals of this state. I offered three amendments to the modified rule, requiring (a) that such students must take an oath which is reasonably

equivalent to the Michigan Lawyer's Oath; (b) that the student's supervising attorney assume personal professional responsibility for the student's representation; and (c) that the supervising attorney must be present during all appellate arguments in a criminal or juvenile case exposing the client to a penalty of imprisonment.

I am pleased that my colleagues have adopted these amendments and, in truth, my concerns about the modified rule are now considerably allayed, in particular by the fact that student advocates, who are *most* in need of appreciating their specific obligations to the Constitution, to the court, to clients, to opposing counsel, to parties and witnesses, and to rules of professional conduct, will not be the only practitioners in the Court of Appeals who are *exempt* from taking an oath to honor these obligations.

Nonetheless, I must still cast my vote against the modified rule. By our supervision of the Michigan State Bar, the Attorney Grievance Commission, the Attorney Discipline Board, and the Board of Law Examiners, a significant responsibility of this Court is to enhance the quality of legal practice in this state. I respectfully believe that extending authority to law students to argue before the second-highest court of our state does not fulfill this responsibility.

My opposition is not intended in any way to disparage the students who will engage in this new practice, the attorneys who will supervise these students, or the law schools that will train these students. Each is to be respected and commended for their efforts. However, in the final analysis, I cannot ignore that such students have not yet completed their legal education, they have not yet been judged competent to practice law by the examination and "character and fitness" procedures of this state, and they have not garnered the experience, perspective and judgment that comes with the sustained practice of the law. With few exceptions, these are all attributes and qualities that characterize those who engage in advocacy in our Court of Appeals.

While I have little doubt that those students who have demonstrated the energy and initiative to participate in clinical and training programs, and who have been selected by their schools to argue before the Court of Appeals, will come to be among the best of our appellate practitioners, I do not believe it is in the best interests of their clients, or of our legal system, that this occur prematurely. I respectfully dissent.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 16, 2010

Corbin R. Davis
Clerk